K

1952.

File No. O Inams 52.

P 50 F

Legal Department
A - BRANCH

Subject:— Opinions regarding Inams and Jahagirs

File No. O. Inams/52.

Item 194 a.

500-A

C O N T E N T S

Legal Department File No. Q. Inams/Re.

Sr. No.	R.I./C.No.	Subject	Pages.
		Opinions regarding Inams and Jahagirs.	
1.	2085 5-2-52	The full forest rights in the village of Kadus claim of Inamdar.	1-5.
2.	2414 14-2-52	The Sanadi inams in Kolhapur whether or not the family was joint at the death of the last male holder succession to	5.
3.	2459 15-2-52	The personal inams. If the inam was really a personal inam the court could not have framed any scheme for the administration thereof for the Devasthan.	7.
4.	2983 25-2-52	The rent of the Devasthan land to the pujari. —— mahivatdar to pay.	9.
5.	2607 19-2-52	The inam lands mistake in inam Patrak — recovery of money paid under mistake.	11-15.
6.	4556 20-3-52	The restoration of the management of the two inam villages of Undai and Rajpur in Thehsand Distt.	15.
17.	6456 26-4-52	The name to be entered in the Govt. records as the holder of the Shiledari Inam at Radki, Distt. Kolhapur, petition by Buwasaheb Duttajirao Ingle.	17-25.
8.	6282 3-5-52	Re: Shri Bhosale, inamdar, of Mhasur would be liable to pay service commutation and education cess, as no service since merger has been rendered to Govt. by him.	25.
9.	8503 21-5-52	Re: Sanad granted by Shri Shambhu Chhatrapati to Nageshbhat bin Ganesh Bhat will have to be deemed to be in the nature of a personal inam.	27.
10.	8854 27-5-52	Re: The Rakhenakarix Hak was the military cess commuted in chas in lieu of military services to be rendered by Patawats. The hak is not a tribute and cannot therefore lapse on the merger.	29.
11.	8984 29-5-52	Re:-Though the plaintiffs claim for declaration of xx title was dismissed the Court issued injunction restraining the defendant from interfering with the plaintiffs' possession of the suit property.	31.
12.			

12. 9441 6-6-52 Re: Land for a religious institution called "Prayag Mutha" in the village of Chakare Distt Nasik inquiry in the history of the inam necessary. 33.

13. 10970 2-7-52 Re: Shri Yeshwant Krishna Apte recognised as the heir of Laxmibai. Whether on the ground that there is no male discedant in the line of the acquirer of the inam, the inam should not lapse to Govt. 35.

14. 10684 27-7-52 Re: The petitioner to agitate the question of the property of any public trust lapse the Assistant Charity Commissioner, Deputy or the Charity Commissioner failing which to file a suit for a declaration is not Devasthan property. 37.

15. 10386 21-6-52 Re: Inam village Kadapatti——— After the death of the holders 50% of the inam would lapse to Govt. and other half enjoyed by their heirs during their life time. 39.

16. 11678 15-7-52 Re: Holder of the inam village at Shembavne Distt. Kolhapur order regarding the position of education cess. 41-4

17. 11781 16-7-52 Whether in view of the fund payment of the Bombay High Court in Kolhapur special appeal No. 229 and 231 of 1949—— various vat hukums by Kolhapur Durbar not to be applicable to fendatory jahagirs. 45-47.

18. 12128 23-7-52 Whether the inamdar in whose name the lands comprising Govt. House Gandhkhind Poona leased to the Poona Universitycan claim non-agricultural assessment. 49-57.

19. 12220 24-7-52 Re: Recovery of as an arrear of land revenue —— Rekh Chakari. 59.

20. 12589 30-7-52 Re: Lands classed 'C' and 'A' inthe inquiry proceedings to be considered to have lapsed to Govt. on account of foliure of proper heirs. 61.

21. 13046 7-8-52 Re: Baroda Govt. selected the site for the purchase of public well etc. either with the consent of the Inamdar or after resorting to acquisition. If either of these done the land would be Govt. land. 63.

22. 13905 11-8-52 Re: Village Malimbi Kalyan Taluka entire village was alienated in favour of Naro Vithal Joglekar. The first Brithsh grantee. 65.

23. 2311 14-8-52 Re: Claim for excess to be rejected. Applicant claims under the relinquishment deed passed by his father and under that cannot claim more than Rs. 571/- annually from Govt. 67.

24. 14479 5-9-52 Re: Rights of Shri. Zirale.——— recognition of——— in view of the merger of Kolhapur State extent to which they refer to the lands in possession of Govt. under resumption. 69.

SVV
11.6.56.
5 c.

	16828 11-10-58	Re: Sanad granted to the Inamdars by the Kolaimar State Inamdars not entitled to enhance the rate.	71.
26.	17944/A 15-10-58	Re: Sanadi Watan lands at Katkol permissions to adopt Alli the first son of Rajamma, after the death of Alla the original holder of sanadi lands.	73-77.
27.	17959/A 15-10-58	Re: Religious endorsement property. order resuming the land by levy of full assessment is invalid and should be set aside by Govt.	79.
28.	16328/A 5-10-58	Re: Settling the inams in the merged Kolhapur area and the rights of the inamdars cannot be determined on the terms and conditions of the Sanad of the Inamdar.	81.
29.	15852/A 23-9-58	Re: Mortgagee cannot be considered as a sharer — wants that the revenue of the village should directly a paid when will have to go the Civil Court and obtain a decree.	83.
30.	13583 19-8-58	Re: Issue of a Certificate by the Collector under section 10 of the Watan Act with a view to getting the Courts order cancelled the effect officiator can then be put in possession of the watan lands.	86.
31.	14293/A 13-9-58	Re: The post of Vathis is stipendiary and the lands assigned as remuneration are now watan lands.	87.
32.	20732/A 10-12-58	Re: The liability of this Govt. to pay to the exholder of the abolished Ashta Jahagir would be limited to the liability of the Hyderabad State.	89.
33.	22104/A 5-12-58.	The lands given as remuneration for service done by Jilhedar family later there were resumed and allowance given in cash each and kind — parties may be directed to establ shed their claim to the inam in the Court.	91.
34.	22152/A 31-12-58	Re: The questioning abolition of inams no merged States — Swami Jagadguru not to.e initiative to set aside the order of resumption passed by the Sarsubha of the former Kolhapur State.	93.

SVV
11.6.56.
5 c.

Ads/19/6

Legal Department.

It is true that in G.R., R.D. No. 7252, dated the 10th September, 1884, the claim of the Inamdar to full forest rights in the xx village of Kadus is admitted. It appears from the papers underlying the resolution that the claim was admitted in respect of trees on waste or forest lands which were in the possession of the Inamdar. But this admission would not have the effect of conceding to him forest rights in S.No. 63 in the said village which is a kadim inam which was anterior to the grant of the inam of the village itself. According to the terms of the sanad kadim inams were excluded from the grant the words used being "જકીમ ઇસ્તમરાર ન કદીમ ઝમાનાર". As the lands of the kadim inam was not granted to the Nath family, the Inamdar cannot lay any claim to the trees in that land. Proprietary right to the trees standing on any piece of land is derived from the property or ownership in the land, quickquid plantatur solo solo cedit. The owner of the land is the owner of the timber which grows upon the land (see Vamaji Jadav vs. Collector of Thana, 6 Bombay High Court Reports, 191 at p. 196; Dandekar's Law of Land Tenures, Vol. 1 pp 48-49, and R.L.A.'s opinion No. 4634 dated 13-5-1948). Lapsed Kadim inam escheats to the Crown and in the circumstance. Inamdar can have no claim to the land or the trees on Kadim inam. Moreover, the point at issue appears to have been settled long ago in G.R., R.D. No. 7674 dated the 17th November 1888. In the memorandum from the Commissioner, N.D., quoted in that G.R. the Commissioner observed:

> "In those villages in which the service grant was made by Government prior to the alienation of the village to the inamdar, and thus excluded from the inam to the latter, the right to the trees in such service lands would undoubtedly vest in Government while xxx in the villages

where the service grant was subsequent to the alienation of the village, such right must, the undersigned thinks, be considered to vest in the inamdar."

Government concurred in the views of the Commissioner and it appears these orders are still in force (vide p. 203 of Gupte's Land Revenue Code, 1897, 3rd Edition). In the circumstances, the Inamdar's contention has no force and the view taken by the Collector appears to be correct.

Sd./-
7/2
Additional Secretary to Government.

G.R. to R.D., No. 2003, dated the 8th February, 1952.

SVV
11.6.56.
4 c.

Legal Department.

Sanadi Inams in Kolhapur.

In Ramappa vs. Laxman (52 Bom. L.R. 839) the Bombay High Court considered the question of succession to the sanadi inam lands. It was held by the High Court that "Vat Hukum No. 44 lays down a general rule that the inams of all kinds are impartible and it should be recognized that in the matter of succession the rule of primogniture applies." Consequently, succession to the sanadi lands in the present case should also be governed by the rule of primogeniture irrespective of the question whether or not the family was joint at the death of the last male holder. According to the rule of primogeniture, opponents 1 and 2, who are the widows of the deceased last male holder's son and grandson, cannot be recognised as heir and the appellant being the brother's son of the deceased male holder is entitled to succeed to the sanadi lands.

It is not known whether Government has decided as to how the inams in the merged Kolhapur State have to be treated. It is, however, for Government to decide whether the appellant's claim to the sanadi lands should be recognized pending any further enquiry into the nature of these holdings. Even if Goverment decides to recognise the appellant as the heir, it should be made clear that this decision is not final and will be valid during the pendency of the inquiry which Government is making in the matter and does not prejudice the right of Government to deal with the inam in any manner it seems proper and just.

Sd/-
13/2

Additional Secretary to Government.

U.R. to R.D., No. 2414, dated the 14th February, 1956.

SVV
11.6.56.
4 c.

Legal Department.

The mere entry in the Alienation Register that the inam is a 'personal inam' will not make it a personal inam unless it is so proved; for, in Shankaracharya of Sankeshwar Math v. Channalappa (41 Bom. Law Reporter, 1317) it was held that the mentions of the inam in the alienation register as Jat inam did not make it any the less an inam to the Math. In the present case there is the decree of a Civil Court whereunder a scheme has been framed for the administration of the inam as a Devasthan inam. The explanation offered by the Inamdar that the nature of the inam was never in dispute and the Civil Court has only decided the manner in which the proceeds of the village should be divided, does not appear to be convincing. If the inam were really a personal inam the Court could not have framed any scheme for the administration thereof for the Edvasthan. Prima facie the inam willbe have, therefore, to be treated as a Devathan Inam in view of the Civil Court's decree unless and until the Inamdar proves in a Court of Law that the Inam is a 'Personal Inam.' The entry in the Inam Alienation Register may, therefore, be changed and if the Inamdar [illegible], wants to dipute it he may go to the Civil Court for relief.

Sd./-
16/2
Additional Secretary to Govt.

U.R. to R.D., No. 2639; dated the 18th February, 1952.

SVV
11.6.56.
4 c.

OFFICE OF THE R.L.A.

Devsthan Inam.

Government has no power to direct the Mahivatdar to pay the rent of the Devsthan land to the Pujari. It is a matter to be settled between Mahivatdar and the pujari. If there is no settlement and the management of the temple is neglected, it would be open to any person interested in the temple or the Charity Commissioner to apply to the Court under section 47 of the Bombay Public Trusts Act, 1950 for the removal of the Mahivatdar and the appointment of a new Mahivatdar.

Sd./-
25/2
Remembrancer of Legal Affairs.

U.R. to R.D., No. 8983, dated the 25th February, 1952.

SVV
11.6.53.
4 c.

LEGAL DEPARTMENT.

Inam lands - mistake in Inam Patrak - Recovery of money paid under mistake.

In the Inam Patrak prepared in 1934 Revision Survey No. 10 which wasin Goan Sanadi Inam was shown inthe Kulkarni Inam and Revision Survey No. 130 which was in Kulkarni Inam was shown in the Goan Sanadi Inam, with the result that Survey Nos. 15 and 10 were treated as Kulkarni Inam lands and according to the Vathukum of the Kolhapur Government these lands were made khalsa and were shown as Dumaldar's raitawa. Apparently, the entry of Survey No. 10 as Kulkarni Inam and the entry of survey No. 130 as Sanadi Inam land were incorrect. In Sankaracharya Sankeshwar Math v. Channallappa (41 B.L.R. 1317) it was held that them mention of the Inam in the Alienation Register as Jat Inam did not make it anytheless an inam to the Math. In other words, an incorrect entry in the Alienation Register would not change the tenure of the lands. The same principle would apply to the present case and the entry of Survey No. 10 as Kulkarni Inam land and that of Survey No. 130 as Sanadi Inam would not change the tenure of these lands. Consequently, there would be no legal objection to correcting these entries.

The second question for the R.L.A.'s consideration is whether the assessment paid by the village officers to the inamdar of the village in respect of Survey Nos. 15 and 10 which were wrongly treated as Dumaldar's raitawa and were shown as such in the village records can be recovered from the inamdar. Admittedly the lands pertaining to the Kulkarni and the Goan Sanadi inams in this village are kadim inams and as such the inamdar can have no claim to the assessment even though the Kulkarni lands were made khalsa under the vat-hukum of the Kolhapur Government. The assessment of these lands should evidently have been credited to to Government. But, unfortunately, on account of the

wrong entry made in the village records under the sarcubha order that these lands were Dumaldar's rajitawa, the assessment of these lands has been paid to the inamdar since then. Whether or not Government would be entitled to claim refund of this amount would depend upon the question whether the amount has been paid to the inamdar a under a mistake of the fact or of law. If the payment is made under a mistake of fact, the refund can be claimed but if it be made by a mistake of law, no refund can be claimed. In Finck v. Tranter (1905 1 K.B. 427) it was held that where a tenant paid rent to an equitable mortgagee who claimed in that capacity, it was held that although the equitable mortgagee had no right to receive the rent, it was irrecoverable as being paid under a mistake of law. In the present case the amount was claimed by the inamdar as Dumaldar and, although the assessment of these lands was not payable to him as Dumaldar, it was paid to him as such. Consequently, the principle enunciated in the aforesaid case may apply to the present case and the court is likely to hold that the payment ofthe assessment has been paid to the inamdar under a mistake of law and not a mistake of fact. Consequently, the refund of the assessment paid by the village officers to the inamdar in respect of these lands cannot be claimed from him.

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18/2

Additional Secretary to Government

U.R. to R.D., No. 2687; dated the 19th February, 1952.

SVV
11.6.56.
4 c.

Legal Department.

In the peculiar circumstances of this case, the possession of the estate may be handed over to Joyantilal who is the eldest male member of the family on his executing a bond of indemnity for compensating Government for any loss they may suffer in consequence of the claims of other sharers.

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19/3
Additional Secretary to Government.

U.R. to R.D., No. 4536, dated the 20th March, 1952.

SVV
11.6.56.
4 c.

This is in connectionwith the petition made by one Buwasaheb Dattajirao Ingle requesting that his name may be entered in the Government records as the holder of the Shiledari Inam at Ruiki, taluka Hatkangale, District Kolhapur. The facts leading to the present reference are as follows: After the death of one Dattajirao Ingle, the holder of the Inam, in 1924, his widow Laxmibai applied to H.H. the Maharaja of Kolhapur on 10-6-1928 for permission to adopt a son. As she was suffering from T.B., without waiting for sanction of the Maharaja she adopted Buwasaheb (i.e., the petitioner) on 28th June 1928; and communicated the fact to the Maharaja. Laxmibai died immediately after on 15th July 1928. The application made by Laxmibai in 1928 for permission to adopt was rejected by the Maharaja by his order dated the 8th February 1933 by which he also directed the name of theproper lineal male descendant to be entered in the Inam register. As Buwasaheb had already been adopted by Laxmibai, he preferred a revision application to the Maharaja against that order on 2nd March 1933. This application remained pendin for a number of years. In the meanwhile on 6th April 1934 the name of one Ganpatrao Narayan Ingle was entered as the holder of the inam in accordance with the Maharaja's order dated 8th February 1933. When the present Maharaja was installed on the Gadi, Buwasheb again made a petition to the Maharaja requesting that the revision application made by him on 2-3-1933 may be expedited. The Maharaja then forwarded the applicati on to the Prime Minister for his views who recommended the grant of ex post facto sanction to the adoption . The recommendation made by the Prime Minister was accepted by the Ruler by Huzur Order No. 96 dated 24-2-1949.

SVV
11.6.56.

2. This case was brought to the notice of Government by the Chief Administrator and the Collector of Kolhapur who recommended that the Maharaja's order should be set aside. But the recommendation of the local officers was not accepted by the Chief Secretary who though it expedient not to interfere with the Maharaja's order dated 24-2-49 (vide Chief Secretary's note at p. 163 ante). The Collector was accordingly instructed to give effect to the Maharaja's order, and the petitioner Shri Buwasaheb was asked to approach the Collector, for futher action. When Buwasaheb applied to the Collector, h was informed by the latter that unless he obtained a certificate from a civil court that he was validly adopted, it was not possible to enter his name as the holder of the inam. The Collector has explained this in para 4 of his letter dated 28-10-1951 by saying that, unless the order made by the Maharaja of Kolhapur in 1933 directing the entry of the name of Gangatree is cancelled, it was not possible to enter the name of Buwasaheb. The Collector has further interpreted the Huzur Order dated 24-2-49 to mean only that the Maharaja had accorded sanction to the making of the adoption, but whether the adoption was valid according to the Vat Hukum, Hindu Law, usage, etc., was for the courts to decide and that until Buwasaheb obtained such a declaration no action was feasible.

3. The P.& S.D. considers that the interpretation put on the Huzur Order dated 24-2-49 by the Collector of Kolhapur is not correct; and prpposes to ask the Collector to enter the name of Shri Buwasaheb Ingle to the lands in question. The R.L.A. is requested to advise whether the view expressed by the P.& S.D. is correct, and whether condition mentioned at 'A' in the Collector's letter at p. 215 ante is required to be fulfilled before the name of Shri Buwasaheb Ingle can be entered to the inam lands.

SVV
11.6.56.

4. In his opinion forwarded tothe Maharaja of Kolhapur on 17-2-1949 the Prime Minister of Kolhapur obsegved as follows:-

> "There are two questions, (1) is the adoption valid in Hindu law? (2) Is the opponent Ganpatrao a holder of the Inam?
>
> (1) must be decided by civil courts and
>
> (2) by Revenue Courts if adoption is held to be invalid in Hindu Law.
>
> In the circumstances, post-facto sanction to the adoption may justly be gi en if H.H. is so pleased and theparty aggrieved may if so x advised, go to civil court and contest the legality of theadoption in Hindu Law. If he succeeds, the Revenue authorities will consider question (2)."

The opinion of the Prime Minister was accepted by the Maharaja. As Laxmibai had already adopted Buwasaheb in 1928, the Prime Minister recommended giving of ex post facto sanction to th adoption made. It is true that the question of validity of the adoption can be authoritatively decided only by a court of law. But the remarks in the late Shri Latthe's opinion that the "party agrieved may if so advised, go to civil court and contest the legality of the adoption in Hindu Law" referred to Ganpatrao whose name had been ordered to be entered as inamdar by Rajaram Maharaja's order dated the 8th February 1933. The intention apparently was that the name of Buwasaheb Ingle, the adoptee, should be entered as the holder of the inam, displacing Ganpatrao. The interpretation put upon the Huzur Order by the Collector of Kolhapur is not correct. As Government has already decided not to interfere x with that Order, the action proposed in the

SVV
11.6.56.
4 c.

in the concludin portion of the P.& S.D. note (p. 247 ante) appears to be correct. As regards the other question, it may be stated that though the Huzur Order dated 24-2-49 does not mention it in specific terms that the order of 1933 is cancelled, from the opinion of the Prime Minister it appears that it impliedly sought to cancel the previous order of 1933 passed by the late Maharaja. There does not, therefore appear any necessity of passing a specific order cancelling the order of 1933 as suggested by the Collector at 'A' in his letter at pg 215 ante.

Sd./-
26/4
Additional Secretary to Government

U.R. to P.& S.D., No. 6465; dated the 26th April, 1952.

SVV
11.6.56.
4 c.

Legal Department.

An Additional Secretary's opinion No. 5800 dated 11-4-1951 it was held that if the Inamdar of Hasur, Shri Bhosale, was rendering services since 1917, it would not be correct that the cess should be imposed onhim, because the intention of the Kolhapur State orders was not to requrie Inamdars both to render service as well as to pay cess. It is clear that since after the merger of the Kolhapur State with the Bombay State, Shri Bhosale, has been servin in the Khasgi Khata of H.H. the Maharaja of Kolha ur but that cannot be treated as service rendered to Government. No service is in fact required by Government. The legal position is that under the Vat Hukums the ervice commutation as well as education cess is leviable from all the Saranjamdars and Inamdars who do not render any service to Government. As no service since merger has been rendered to Government by Shri Bhosale he would be liable to pay service commutation and education cess. If, however, in view of the fact that Shri Bhosale is se ving in the Khasgi Khata, Government consider that he should be exempt from payment of the cess, it is open to Government to give him such concession. That would not, however, affect thelegal positionx as stated above.

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Additional Secretary to Govt.

U.R. to P.& S.D., No. 5959; dated the 3rd May 1952.

SVV
11.6.52.
4 c.

Legal Department.

In the Collector's report dated 18-9-1951 it is stated that the village of Bälkewadi has bot been placed so far in any specific Inam Category. The Sanad granted by Shri Shambhu Chhatrapati to Nageshbhat bin Ganesh Bhat says in the end that the Inam should be enjoyed by the grantee from generation to generation by performing the six duties of Snan Sandhya, etc. ( ) and by wishing well of the grantor. The Sanad does not stipulate that the income or a portion of it should be utilised for a particular purpose. Apparently the Inam was bestowed with a view to recognizing the pious nature of the grantee and for his benefit. As such the grant will have to be deemed to be in the nature of a personal Inam (Cf. Dattatreya Pandurang Gosavi vs. Lakshman Mahadeo Pohekar, 33 Bom. L.R. 1415). The last holder of the Inam Vasudeo Vithal Agnihotri died on 3-1-1901 without leaving any issues. His brother Yesnao was, therefore, entitled to succeed to the Inam; andafter his death his widow Shrimati Radhabai would appear to be entitled to succeed. There would not, therefore, appear any objection to recognizing Radhabai as the holder of the Inam as proposed by the U.S., R.D.

Sd./-
21/5
Additional Secretary to Government.

U.R. to R.D., No. 8503; dated the 21st May, 1952.

SVV
11.6.56.
4 c.

Legal Department.

The view taken in R.D. note at p. 73 ante is correct. As stated by the Alienation Inquiry Officer in his report dated 23rd July 1951, the Nakhshakari Hak was military cess commuted in cash in lieu of military services to be rendered by Patawats. It appears Patawats held land for the purpose. The hak is not a tribute paid by one State to another and cannot therefore lapse on the merger. The Patawats jahagirs are alienation which will have to be considered by Government in their inquiry regarding alienations in merged States. Until that inquiry is completed and a decision arrived at, the hak in question should not be discontinued and the status quo should continue.

2. As regards the ~~mark~~ salami payable by certain States to the Udani Jahagir, it clearly appears to be a kind of tribute. It is true that it was paid throug the Idar State. But on the merger of the States which used to pay the same, their liability should cease. If the holder of the Udani Jahagir has any claim regarding the salami payable by these States, it is open to the holder of the property to refer the same by proper proceedings.

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26/5
Additional Secretary to Government

W.R. to R.D., No. 3234; dated the 27th May, 1952.

SVV
11.6.56.
4 c.

The applicant's main argument for requesting Government to restore the land to him is that suit No. 113/49 ended in a decree in his favour as he is declared as a owner of the land. This statement is incorrect. In para. X 17 of the judgment, the court remarks - "The possession of the plaintiff thus commences from 1913and long possession would entitled him to a perpetual injunction under section 54 of the Specific Relief Act etc.". Though the plaintiff's ~~xx~~ claim for declerations of title was dismissed~~,~~ ~~xxx~~ the Court issued injunction for restraining the defendants/~~from~~ interfering with the plaintiff's possession of the suit property and restrained Defendant No. 1 (present applicant) from getting ~~xxxxxxxxx~~ execution of the Huzur Order dated 30th January 1949. Government has already set aside the Huzur Order (vide R.D. letter No. ~~xxxxxxxxxxxxxxxxxx~~ 3450-A/49 dated 28-3-50). The status quo may be allowed to prevail and the applicant may if so advised seek his remedy in Court of Law.

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Remembrancer of Legal Affairs.

U.R. to R.D., No. 3984, dated the 29th May, 1952.

SVV
11.6.56.
4 c.

Legal Department.

Lands Survey Nos. 107, 108 and 109 situate in the village of Chakore, District Nasik, are entered in the Revenue records as in m in the name of Shri Mahant Shivgir Guru Kapil Khammi as the holder thereof. The entry in the inam register describes the inam as Devathan Class III. The holder, however, has produced a Sanad which contains an endorsement that inam is Class II ise., personal inam. It is true that the Sanad states that the lands are the endowment property of Goswee Akhara Neerbani. The Revenue records do not show what the said institution was. But it is added in the Sanad xthat the xxx managers of he institution will continue faithfull subjects of Government and shall pay a settled and consolidated land tax. There is nothing to show how the present holder acquired the lands, the possession of which seems to be with him for a long time. The holder has stated that he is appropriating the income of the land for a Religious institution called "Prayag Mutha." The reason stated in the Prant Officer's Order for resumption that the endowment was for the benefit of a village deity and that the said deity is not in existence is entirely baseless. A further and detailed inquiry in the histoyry of the inam appears necessary on the following points :-

(1) what was the nature of the institution, Goswee Akhara Neerbani ?

(2) who were its original managers who are referred to in the Sanad ?

(3) how does the present holder trace his claim from the original managers ?

Sd./-
Additional Secretary to Government.

U.R. to R.D., No. 9441, dated the 6th June 1952.

SVV
12.6.52.
4 c.

Legal Department.

Special Appeal No. 15 of 1949 in the High Court filed by Shri Jivaji Shrirang against Shri Yeshwant Krishna Apte was dismissed by the High Court. In that case the plaintiff had put forth his claim to the property left by Bai Laxmibai. All the arguments put forth on behalf of Jivaji Shriang were rejected by the High Court. Vishnu Waman Apte, the uncle of Yeshwant Krishna, was also a defendant in that litigation. The result is that Shri Yeshwant Krishna Apte in whose favour the Jahagirdar of Ichalkaranji had passed his order in the year 1939 has been recognised as the heir of Laxmibai. On the strength of the High Court decision Yeshwant Krishna Apte is now claiming the possession of the estate which is in charge of the Nazir of the District Court. But the Collector of Kolhapur in his letter at page 1 ante has raised the question whether on the ground that there is no male descendant in the line of the acquirer of the Inam the Inam should not lapse to Government. In support of this argument the Collector has placed reliance upon the order of the Political Agent of 1871. But the Political Agent's order was passed in an heirship enquiry and there is reference therein to the holders of the Inams in the year 1807, 1820 etc. Prima facie there does not appear anything to suggest that Gopal Ballal was the acquirer of the Inam. The geneology of the family was also considered by the High Court in the Special Appeal referred to above. Athough Government was not a party to the said Appeal, it appears that the High Court gave notice to the Government Pleader and he was heard. In the face of the High Court decision it would be difficult to support the contention raised by the Collector of Kolhapur. In these circumstances it would be desirable to direct the Collector to hold a thorough inquiry in the matter and to produce more cogent proof in support of his view, particularly in view of the fact that the Government Pleader was heard on behalf of the State by the High Court.

Remembrancer of Legal Affairs.

U.O. to R.D., No. 10970, dated the 2nd July 1952.

Office of the R.L.A.

Rightly or wrongly Government has decided the matter more than once against the petitioner. The Bombay Public Trusts Act, 1950, has since been brought into operation and under section 19 of that Act an inquiry has to be held as to whether the propery is the property of any public trust. Under section 20, on completion of the inquiry provided for under section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefore as to the matters mentioned in the said section. Under section 70 an appeal canlie to the Charity Commissioner against the finding of the Deputy or Assistant Charity Commissioner under section section 20; and under section 72(1), any person aggrieved by the decision of the Charity Commissioner under section 70 or on the questions whether a trust exists ~~under~~ or whether such trust is a public trust or whether any property is the property of such trust may within 60 days from the date of the decision ap ly to the court to set aside the said decision. In view of these provisions, the proper course fro the petitioner is to agitate the question before the Assistant or Deputy Charity Commissioner in the first instanceand if he fails there, he may make an appeal to the Charity Commissioner and if he fails there also, it would be open to his to file a suit for a declaration that the property is not Devasthan property. Even if Government now decides the matter in his favour, that would be no clnclusive proof that it is the Devasthan property and the matter can still be agitated before the Assistant or Deputy Charity Commissioner. In these circumstances, the proper course would be to advise the petitioner to proceed under the Bombay Public Trusts Act for relief.

Sd./-
26/6
Remembrancer of Legal Affairs.

U.R. to R.D., No. 10684; dated the 27th June, 1952.

SVV
12.6.56.

Legal Department.

Para. 1 of the order issued by the Ruler of Jamkhandi on 22-9-1915 provided that the Judid Inams and cash allowances should be enjoyed by the then holders in their entirety during their life time. Para. 2 provides that after the death of the said holders 50% of the inam would lapse to Government and the other half should be enjoyed by their heirs during their life time. It is true that in the present case half the income of the inam village Kadapatti was paid intwo equal shares to the two sons of Ambakka. But such division of shares has not the effect of splitting the inam and converting it into two grants. It still retains its character as one inam. It does not, therefore, appear it would be feasible to forfeit the share of one of the sons after his death. The intention of para. 2 of the Ruler's order dated 22-9-1915 was that the heirs of the original grantees should enjoy half the income of the inam. Vasudeorao the surviving son of Ambakka appears therefore to be entitled to get half the income of the inam. The view expressed by the D.G.P., Bijapur, and the R.D. appears to be correct.

Sd./-
20/6
Additional Secretary to Government.

U.R. to R.D., No. 10386; dated the 21st June 1956.

SVV
12.6.56.
4 c.

Legal Department.

By his order dated 5th June 1951, the Collector of Kolhapur recognised one Dattatreya Shivram Gabnis as the holder of the Inam village of Shembavne, taluka Bhuduvadi, District Kolhapur. In addition to the usual assessment the Collector by the said order also imposed an annual levy of Rs. 261/- on account of education cess. In his appeal petition to Government, against the above order of the Collector imposing the cess the petitioner Shri Gabnis has raised inter alia the contention that the Vat Hukums under which the education cess has been imposed had not been extended to the Vishalgad Jahagir wherein the village Shembavne ~~xxxxxxx~~ was situate. In support of this contention the appellant has forwarded a copy of the recent judgment of the High Court in F.A. Nos. 329 and 331 of 1949, wherein the High Court ~~xxxxx~~ has expressed the view that the Vat Hukums issued by the Kolhapur Government did not extend to the areas of the Jahagirs except with the concurrence of the Political Agent and unless such concurrence was proved the High Court was not prepared to assume that the Vat Hukums extended. The education cess was introduced in the Kolhapur State by Vat Hukums No. 89, dated 24-3-1919 and No. 6, dated 29-4-1918. The R.D. accordingly made an inquiry of the Collector of Kolhapur whether these Vat Hukums were extended to the Vishalgad Jahagir. The Collector has not offered his remarks as to whether the two Vat Hukums were extended to the Jahagir area with the concurrence of the Political Agent. He has only invited attention to his earlier report dated 15-12-1951 (pp. 49-50) where he has stated that such Vat Hukums automatically extended to the Jahagir areas. The Collector has further invited attention to R.L.A.'s opinion No.

16550, dated 18-10-51, where the R.L.A. considering the Prime Ministers Notifications No. 16, dated 17-8-1945 (p. 83 ante) has expressed the view that the said Notification has been issued to declare the correct position of law applicable to Kadim Inams in Jahagir villages viz. that all Vat Hukums automatically extended to the Jahagir areas. In view of the High Court judgment the R.L.A. is requested to advice.

2. It is true that in FAs. Nos. 229 of 1949 and 231 of 1950, the High Court has expressed the view that the position of law between the years 1863 to 1930 was that no law could be made applicable to the Jahagirs except with the concurrence of the Political Agent, and that if it was contended by anybody that any Vat Hukum which was applicable in the Kolhapur State was made applicable to a Jahagir it must be shown that the concurrence of the Political Agent had been obtained. But this decision will be of no avail to the petitioner in the present case. The High Court decision referred to a suit filed as long back as in 1939, and the question presumable was whether the Vat Hukums applied to the areas of the Jahagirs when the cause of action arose. In the present case the applicant was recognised as the heir of the last holder of the Inam village Shembave by the Collector's order dated 6th June 1951. The question arises whether the said order in as much as it directs the imposition of education cess is in order. In this connection attention is invited to the Kolhapur Government Order No. 38, dated 10-11-1948. By that order the Ruler of Kolhapur directed that the Feudatory Jahagirdars were no longer entitled to exercise civil or criminal jurisdiction over their Jahagirs, but were to hold the States forming part of their Jahagirs as Saranjam. Clause (2) of the order embodies the condition that the Saranjam revenues shall be held by the Jahagirdars in the same way as other

GVV
19.6.56.

holders of Sarenjams in the State and subject to the conditions laid down by the laws or rules made thereunder in respect of service commutation, education cess, succession nazarana, etc. The education cess was introduced in the Kolhapur State by Vat Hukums Nos. 28 dated 24-3-1919 and No. 0, dated 29-4-1918. It would appear that these Vat Hukums were applied to the feudatory Jahagirs by the Kolhapur Government Order dated 10-11-1948; and the Jahagirdars held their sarenjams subject to the payment of education cess as provided by the said Vat Hukums. Village Shambavne which is held by the petitioner in Inam formed part of the Vishalgad Jahagir. But when the Jahagirdar himself is made liable to pay the education cess it goes without saying that the Inamdar would also be liable to pay the same. The contention raised by the petitioner that the said two Vat Hukums had not been applied to the Vishalgad Jahagir has no force.

Sd/-
14/7

Additional Secretary to Government.

U.R. to R.D., No. 11678; dated the 15th July, 1952.

SVV
12.6.56.
4 c.

Legal Department.

The question raised in this case is whether in view of the judgment of the Bombay High Court (Bowadekar and Dikshit JJ.) in Kolhapur Special appeals No, 229 and 231 of 1949, it should be accepted as a general rule that the various Vat Hukums issued by the Kolhapur Darbar relating to the succession of watan lands should be held not to be applicable to feudatory jahagirs, unless they were applied with the sanction of the Political Agent or the Feudatory Jahagirdar's Council. The decision in question relates to the Kagal Jahagir and although Government was a party to the appeal, it would not be proper to hold that in every case in all Feudatory Jahagirs this would be a general rule to be applicable to the succession of watan lands. In the present case, which relates to the succession of sanadi inam lands of Kapshi, the Revenue Authorities have held that the petitioner's adoption cannot be recognised as it was not shown that the previous sanction of the State was obtained. In the present case the succession opened in 1950, after the merger of the Kolhapur State. It is true that the Bombay Hereditory Offices Act, 1874, has not been applied to the merged States including the Kolhapur State. In the absence of the ace application of the said Act, the succession would be governed by any laws applicable to thearea or by any custom or usage in vogue. The previous sanction of the State to a succession, which is not direct, but which is by adoption or otherwise, was not an anomaly in the Kolhapur State. Even in the State proper, the watan sanads contained such condition. The Relationship of the Kolhapur State with the Feudatory Jahagirdars and the extend of suzerainty

SVV
12.6.56.
4 C.

exercisedby the State over the Jahagirs was always indefinite and not free from doubt. Even assuming that the Kolhapur Vat Hukum relating to thesanction of the State to any adoption is inapplicable, it may be possible that tne Jahagirdarès consent was necessary, particularly in watans or inams created by him i.e., which were Jadidm. In this particular case the respondent has cited another judgment of the Bombay High Court (CJ & Gajendragadkar J) in Kolhapur Special Appeal No. 18, dated 18th January, 1951, in which it is stated that tne Kolhapur Vat Hukums were held to be applcable to the Feudatory Jahagirs. This woould be in cnnflict with the judgment relied upon ~~xxx~~ by the petitioner. In these circumstances tne best course will be to leave the parties to nave recourse to the civil Court for the proof of their claims.

Sd./-
15/7
Additional Secretary to Government.

U.R. to R.D., No. 11781, dated the 16th July, 1952.

SVV
12.6.56.
4 c.

Legal Department.

The question raised in these papers is whether the inamdar in whose name the lands comprising the Government House at Ganeshkhind, Poona, stand now leased to the Poona University -- can claim non-agricultural assessment. It appears from the letter of the Collector of Poona dated 29th November 1951 (at page 61 ante) that the Government House estate comprised of Survey Nos. 24, 25 139, 155/2 and 3 in the village of Aunth and Survey No. 76 at Bapodi and Survey Nos. 133 and 132B at Bhamburd Out of the these the lands in the villages of Bapodi and Bhamburda were Government lands and no question of paying any assessment in respect thereof arises. The lands in the village of Aundh are said to have been held by the members of the Dev family. In the Alienation register reference is made to the Inam Commissioner's decision of 31st March 1859 and it isstated that the inam is a Devasthan inam Class III "to be continued in inam for the expenses of Chinchwad Dev for so long as there may be in existenc any male lineal descendant of Narayan Dev bin Chintaman Maharaj." The Collector in his letter dated the 16th April 1952 states that although the village of Aundh is Devasthan inam, the lands comprised in Government House estate are Khalsa lands and at presnet stand in the name of the Governor of Bombay. The Settlement Commissioner does not, however, agree with this view. According to the Settlement Commissioner theoriginal correspondence showing how ent lands for the Government House estate were acquired is not traceable. But as stated by th Settlement Commissioner, it appears from the correspondence underlying Government Resolution (Revenue Department) No. 8300, dated 25th November, 1903, as also

SVV
18.6.56.
4.0.

the correspondence underlying Government Resolution (Revenue Department) No. 1831, dated 2nd May 1868 that the lands were not compulsorily acquired under any law relating to land acquisition in force at the time, but were secured or acquired on payment of the amount of assessment to the holders of the inam. Inspite of the fact that the lands were appropriated for the use of the Government House, the amount which is being paid since the acquisition is the fixed amount of agricultural assessment. In 1865 an attempt was made to capitalize the annual payment of assessmen, but on account of the objection of the inamdars, it was given up. In the correspondence of 1865 the annual payment is described as "rental." But this is immaterial. Under Bombay Regulation XVII of 1827 which was in force in 1868 when the acquisitionfor the use of the Government House appears to have been made or even under the Bombay Survey & Settlement Act, 1865, which was in force until it was replaced in 1879 by the Bombay Land Revenue Code, there was no practice in existence for the levy of non-agricultural assessment. It is, therefore, clear that although the lands in the Aundh village were not acquired under any law relating to compulsory purchase, the acquisition was on the lines of the payment of a fixed annual assessment to the Inamdar. Para. 215 of the Joglekar's Land Alienation Manual shows that this was ones of the methods by which Miresi rights in an inam village used to be acquired. It is, therefore, clear that although after the acquisition the lands were not made Khalsa, but are still continued as 'inam,' Government hold miresi rights in them permanently on payment of agricultural assessment. From annexure 'A' to the Memorandum of the Settlement

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Commissioner's Report dated 30th August 1951 it appears that the annual assessment payable was revised at he revision settlement and the amount of the assessment which was originally Rs. 309/15/- was increased to Rs. 893/11/- Owing to the amalgamation of Survey No. 26 it was increased to Rs. 914/11/-. The revision settlement appears to hayd been made in 1890. If this is so the acquisition appears to have been made on the conditionof the payment of agricultural assessment of the land, whatever that may be at any time. In 1890 the structures of the Government House were already erected. The Settlement Commissioner in his memorandum referred toabove also states that theland even after the construction of the buildings is shown as agricultural and the assessment fixed thereon is agricultural assessment. In 1890 when the revisionx settlement took place the land was appropriated to a non-agricultural use and if it was the condition of the acquisition that the inamdar was to be entitled to the payment of assessment or rent according to the use to which it was put, the payment would have been made tohim on the basis of non-agricultural assessment, as the Bombay Land Revenue Code was then in force and non-agricultural assessment could have been levied under section 48 of that Code. This circumstance leads to the concludison that the acquisition was the acquisition of Miras1 rights in lands in the condition of the payment of rent in the form of assessment of the land on agricultural basis. It does not, therefore, x appear that the inamdar can claim assessment on non-agricultural basis now, merely because Government has leased the lands to the Poona University.

2. The second question which is not raised in these papers, but which requires consideration in view of the Bombay Personal Inam Abosition Bill x

which is before the Legislature, is whether the lands though originally granted as Devasthan and continued to be shown as such in the Alienation Register have still retained that character. It is true that in the Alienation Register it is stated that they were granted for the expenses of Chinchwad Dev. But it is added that they are to be continued so long as there is a male descendant of Shri Ma ayan Dev. This recital makes it doubtful whether the grant was to the deity or to the Dev family. It could appear from the Chinchwad litigation which went to the High Court in Chanteman vs. Bhondo Nandlux (I.L.R. 15 Bom. 612) that the Peshwas themselves had drawn a distinction between the grants made to the Savasthan or deity and those for the maintenance of the Dev family. It do s not appear that the Collector or the Settlement Commissioner has made any attempt to investigate this point. The judgment and decree in the said suit and other papers filed init would throw light on the point. If the Aundh village andthe lands forming part of the Government House estate are not grants to be held as an endowment in favour ~~xxx~~ the Savasthan, they would be the personal inam of the Dev and family and would come within the scope of the Bombay Personal Inam Abilition Bill. This inference is supported by the fact that the Aundh village is not shown in the Revenue Records as standing in the name of the Trustees of the Chinchwad Savasthan, but certain members of the Dev family.

Sd./-
28/7
Additional Secretary to Government

U.R. to R.D., No. 12128; dated the 23rd July 1956.

SVV
12.6.56.
4 c.

Office of the R.L.A.

Rekh Chakari - Recovery of- as an arrear of land revenue.

Under section 187 of the Bombay Land Revenue Code, all sums leviable as an arrear of land revenue can be levied under the foregoing provisions of Chapter XI and all the provisions of that Chapter shall, so far as maybe, be appliable thereto. The words "so far as may be" are significant. Under section 144 in Chapter XI temporary attachment of the village can be effected and management taken over if owing to dispute amongst the sharees, or for other cause, the Collector deems that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village could not be paid as it falls due. Rekh Chakari is not land revenue payable in respect of the entire village or share of the village. Consequently, section 144 would not be available. Section 159 in Chapter XI provides that if a holding in respect of which an arrear is due, consists of an entire village or a share of a village, etc..... the defaulter's village canbe attached and taken under management. Rekh Chakari is not an arrear due in respect of the holding, that is to say, the village or part of the village. Consequently, section 159 also cannot be invoked. If Rekh Chakari is leviable as an arrear of land revenue it can be recovered by resorting to one of the appropriate processes under section 150 in Chapter XI of the Bombay Land Revenue Code. The view taken by the U.S., R.D. is correct.

Sd./-
23/7
Remembrancer of Legal Affairs.

U.R. to R.D., No. 12229) dated the 24th July, 1952.

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12.6.56.
4 c.

OFFICE OF THE R.L.A.

It would be seen from the proceedings underlying the enquiry in this case that proper notice had been given to the persons claiming the lands to put in their claims. In the case of lands in Statement 'C' no persons came forward to claim the same. In the case of lands in Statement 'A' the claimants had not been able to establish their claims. There would be no objection therefore to considering both these classes of lands as having lapsed to Government on account of failure of proper heirs. The course suggested by the R.D. subject to the precaution stated at 'A' in the Collector's letter at page 12 ante would appear therefore to be unobjectionable.

Sd./-
29/7
Remembrancer of Legal Affairs.

U.R. to R.D., No. 12589; dated the 30th July, 1952.

SVV
12.6.56.
4 c.

Office of the R.L.A.

The view expressed by the Under Secretary, Revenue Department in his note dated 25th June, 1952 (p. 3 ante) appears to be correct. However, before taking further actionin in the matter the following point requires to be got cleared. The Collector passed his order dated 10th January 1951 directing the Mamlatdar to remove the encroachment under section 61 of the Bombay Land Revenue Code, 1879 under the impression that theland encroached upon was Government land (vide his endorsement at p. 125 of the C.S. addressed to the Mamlatdar, Bardoli). But it also appears from that endorsement the the Baroda Government had selected the site for the purpose of a public well as well as for storing drinking water for the cattle,. It may be that the Baroda Government had done this either with the consent of the Inamdar or after resorting to acquisition. Perhaps the Collector maybe requested to purede this point further. If either of these things had been done, tneland would appear to be Government land and the Collector's order dated 15th January 1951 would be correct.

Sd./-
6/8
Remembrancer of Legal Affairs.

U.R. to R.D., No. 13046; dated the 7th August, 1952.

SVV
12.6.56.
4 c.

Legal Department.

The entry in the Land Alienation Register of the Kalyan taluka in respect of the village Nalimbi shows that the entire village was alienationin favour of Naro Vithal Jogalekar, the first British grantee. Presumably the grant would be a grant of/ the soil and not of the royal share of the revenue alone. No reservationin respect of forests in the present case would appear to be entitled to cut the trees in the forests. However, as the point is of importance the Agriculture and Forest Department, before issuing orders may ascertain through the Collector of Thana whether the grant in this case is a grant of the soil or of Revenue by a reference if necessary to the Alienation Office.

Sd./-
6/8
Additional Secretary to Government.

U.E. to A.& F.D., No. 13205; dated the 11th August, '52

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OFFICE OF THE R.L.A.

Apart from the question whether the grant was fixed at Rs. 571/- annuallyor whether the grant was of half the revenue of the village then assessed at Rs. 571/- but liable to variation according as the revenue of the village increases or decreases, thefact remains that theapplicant claims under the relinquishment deed passed by his father and under that deed he cannot claim more than Rs. 571/- annually from Government. Consequently, his claim for excess may be rejected.

Sd./-
12/8
Remembrancer of Legal Affairs.

U.R. to R.D., No. 13511, dated the 14th August, 52.

SVV
12.6.56.
4 c.

Legal Department.

It is true that if the Maharaja's orders dated 8th December, 1948 for restoration of all the inam lands to Shri Zirole are to be implemented in full, either Shri Zirole will have to be compensated for the lands which have beengranted since resumption or the grantees willhave to be compensated. But in view of the merger of the Kolhapur State, it would be open to Government to recognise the rights of Shri Zirole only to the extent to which they refer to the lands in possession of Government under resumption (see Secretary of State v. Bai Rajbai 42 Indian Appeals 229) in which case the question of the compensating either Shri Zirole or the grantees of lands subsequent to resumption would not arise. As regards the lands which are in the possession of thief parties, Shri Zirole may be informed that he may have recourse to the civil court to enforce his claim to them.

Sd./-
8/9
Additional Secretary to Government.

U.R. to R.D., No. 14479; dated the 5th September, 52.

SVV
18.6.56.
4 c.

Legal Department.

The sanads granted by the Belsinor State to the Inamdars and under which the villages are held, contain an express condition that the Inamdars are not entitled to enhance the rent. The compromise agreement obtained by the Inamdars is, therefore, invalid in law and it is not, therefore, open to the Inamdars to claim enhanced rent. Tenants will be justified in paying the rent at the old rates and the said rent may be sent by money order, if the Landlord refuses to recover.

Sd./-
10/10
Additional Secretary to Government.

L.R. to R.D., No. 16836/A; dated the 11th October, 1952.

SVV
12.6.56.
4 c.

Office of the R.L.A.

X In this case Shri Alla Alli Mansur of Katkol (formerly of the Kolhapur State), taluka Ramdurg, district Belgaum, has made an appeal to Government against the order passed by the Collector of Belgaum on 31st December 1950, rejecting his claim to be recognized as the heir of the last holder of the sanadi watan lands consisting of surveym Nos. 175 and 177 at Katkol. One Alla Bapu Mansur was the original holder of the said sanadi lands. He had two wives, Muktumbi and Piramma. By the former he had one daughter Rajamma who left behind three sons Alli, Muktum and Alla. The other wife had no issues. After the death of Ali Bapu, the nam of Muktumbi was entered as the heir of her ~~x~~ husband. She died in 1916. After her death the name of Piramma was entered. Subsequently she applied to the State authorities for permission to adopt Alli the first son of Rajamma, on the ground that such adoption was permissible according to a custom existing at Katkol. In January 1920, permission was accordingly granted and the lands were entered in the name of Alli. Alli died on 17th January 1947; and it is contended by the present petitioner, Alla Alli Mansur, that he had been adopted by the deceased Alli on 15th January 1947. On the death of Alli the lands were put under attachment and an heirship inquirywas started in which the present petitioner put forth his claim to succeed to the watan on the ground that he was the adopted son. His claim was however rejected by the Collector of Belgaum on the ground that the Mahomedan Law does not recognise adoption. The Collector of Belgaum ~~xxxxxxxxxxxxxxxxxx~~ in para. 5 of ~~xxx~~ his report dated 17th July 1952(p. 35 ante) states on the authority of the opinion recorded by the District Government Pleader, Belgaum, that on the adoption of Alli, Rajamma became his sistern, and Alla became the son of the deceased Alli's sister and as such entitled to succeed

SVV
12.6.56.

to his estate in the absence of any sharers or ~~mak~~ residuaries. The R.L.A. is requested to advise whether on these grounds the claim put forth by Shri. Alla Alli Mansur should be accepte.d

2. The Mahomedan Law does not recognize adoptions. But in some places custom is allowed to prevail over that Law (vide Mulla's Mahomedan Law, p. 293). It appears until 1927 the Kolhapur Darbar recognised the custom of adoption among the Muslims and therefore sanctioned the adoption of Alli by Piramma in the year 1920. Later on however the Darbar altered its policy and Vat Hukum No.12, dated 22nd June 1927 (pp. 831-832 of Vol. II of the Vat Hukums) accordingly directed that as adoption was not recognized by the Mahomedan Law it would not be recognized or sanctioned by Government. It is true that as contended by the petitioner Shri Alla Alli Mansur in his petition at page 1 ante he might have been adopted before the merger of Kolhapur. Actually however he was adopted on 15th January 1947 when the Vat Hukumef 1927 was in force. His adoption was not fortified by sanction and was therefore of no effect. That was not however te case with the adoption of Alli by Piramma in 1920. Nor does it appear that a custom had been recognised in the Kolhapur State as argued by the petitionmer. The Collector's order dated the 31st December 1950 rejecting his claim on the ground that he was not the adopted son of the deceased Alli appears therefore to be correct. Alternately the petitioner contends that he is entitled to succeed being the natural brother of the deceased Alli. But on the recognition of the adoption of Alli in 1920 this relation cannot be said to have continued. Moreover the recognition

SVV
18.6.56.
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of Alli in the year 1920 as the heir of the deceased holder cannot be deemed to amount to the making of a fresh grant.

3. Lastly, it has to be considered whether the petitioner has any claim to succeed on the ground that by the adoption of Alli in 1920 he became his sister's son. It is true that the District Government Pleader, Belgaum in his opinion dated the 9th June 1958 has expressed the view referring to page 68 of Mulla's Mahomedan Law that sister's children can be considered as heirs in the absence of any sharers or residuaries. But that principle will apply in regard to the non-watan property of the deceased Alli. That will not be a sufficient authority to recognise the petitioner as the heirs of the last holder of the sanadi watan lands. There being no direct male descedant in Alli's family his line will be deemed to have become extinct. The appeal petition filed by Shri Alla Alli Mansur may therefore be rejected.

Sd./-
14/10
Additional Secretary to Government.

U.R. to R.D., No. 17044/A; dated the 15th October, 1952.

SVV
12.6.56.
4 c.

Legal Department.

It is clear from the Collector's report at page 13 ante that it is a religious endowment property and the institution for which it has been granted by Government is still in existence. Consequently the Prant Officer's order resuming the land by levy offull assessment is invalid and it should be set aside by Government.

Sd./-
13/10
Additional Secretary to Government.

U.R. to R.D., No. 17869/A; dated the 15th October, 1952.

SVV
12.6.56.
4-c.

Legal Department.

It appears from the correspondence that when Shri Sadashiv Chintaman Bapat had applied to the Jahagirdar in 1939 to cut sandalwood trees from S.No. 48, objection was raised on behalf of one Jiwaji Keshav Bapat whose name had been entered as the Inamdar of the village to granting such permission. It appears that the said Jiwaji and the present petitioner had a fourth share each and another Shri Shripad Mahadaji Bapat held the other half of the village. The correspondence in this behalf went on for a long time until the Karbhari of Ichalkaranji relying upon the Rules made by the Jahagirdar in 1939 recommended to the Kolhapur Darbar in 1944, that the trees had not been conceded totne petitioner and that therefore the permission asked by him should not be granted. The Ichalkaranji Rules had been based on Kolhapur Sarsubha Vat Hukum No. 13 of Fasli 1296. According to rule 4(2) of the said Rules in cases where no settlement j di or service commutation percentage charges are recovered in respect of lands ~~xxxx~~ belonging to Dumaldars, the reserved trees standing on such lands shall belong to the Jahagirdar. The Karbhari's recommendation of 1944 was based on this rule. The trees in question were held to be vesting in the Jahagirdar. The petitioner seems to have again raised the same matter after merger. As the question has once been finally settled by the Kolhapur Darbar in 1944, no useful purpose will be served by reopening the matter at this stage and going behind the order of 1944. Besides the question of settling the Inams in the merged Kolhapur area appears to be still pending and the rights of the Inamdar cannot be determined on the terms and conditions of his grant. In the circumstances his claim to the sandalwood trees may be rejected by Government.

Sd./-
7/10
Additional Secretary to Government.

U.R. to A. & F.D., No. 16528/A; dated the 8th October, 1952.

SVV
12.6.56.

Office of the R.I.A.

In the present case themortgagee cannot be considered as a sharer in the strict sense of the term. He is entitled to the share of the revenue of the village under the mortgage bond until the mortgage debt is satisfied. His name has not beenentered in form No. VIII, nor has he obtained any decree of the civil Court for enforcing his mortgage claim or for the recovery of any dues thereunder. It is true that the deceased Inamdar gave an order tothe village officers to credit the revenues of the village to the account of the mortgagee in the bank. But it was open to the Inamdar to revoke that order at any time if he so considered it necessary for any reason, in which case the only alternative for the morrgagee was to obtain a decree in the Civil Court, whereupon he would be entitled to get his share of revenue of the village direcily from the village officers. If the deceased Inamdar himslef could revoke it, more so could the succeeding managing Inamdar of the village. Consequently, the view taken by the Collector is correct and, if the mortgagee wants that the revenue of the village should be directly paidto him, he willl have to go to the Civil and obtain a decree.

Sd./-
22/9
Remembrancer of Legal Affairs.

U.R. to R.D., No. 15552/A, dated the 22nd September, 1952.

SVV
12.6.56.
4 c.

Legal Department.

Apparently theeitht pieces of land are watan property assigned towards the emoluments of the Vathia as contemplated by section 23 of the Bombay Hereditary Offices Act, 1874. The consent decree in C.S. No. 187 of 1950, to which the Officiator Dahyabhai Chhana was a party amounts to a lease of four out of the 8 lands in favour of Shri Chhitabhai Khushalji. Under section 7 of the Watan Act, watan property assigned under section 23 as remuneration an officiator and the profits of watan property so assigned shall not be alienated or assigned to any person whatever without the sanction of the State Government. Goverment was not a party to thesaid suit and no sanction w s given tothe leasing out of the said pieces of land. The lands being assigned lands must remain with the officiator. But the consent decree passed in the suit has resulted in the alienation of the lands in favour of Shri Chhitabhai Khushalji, an outsider. In these circumstances the course open to the Collector would be to issue a certificate under section 10 of the Watan Act with a view to getting theCourt's Order cancelled. The Officiator can ten be put in possession of the said lands.

Sd./-
14/8
Additional Secretary to Government.

U.R. to R.D., No. 13553, dated the 19th August, 1952.

SVV
12.6.56.
4 c.

Legal Department.

Additional Secretary's previous opinion was based on the assumption that the lands in question were watan properties assigned towards the emoluments of the villages servants. The R.D. now states that the post of the Vethia is stipendiary and the lands assigned as remuneration are not watan lands. In viewof this the R.L.A. is requested to advise.

2. It appears that the resumptionof lands in question will be governed by the rules made by the Government in Notification No. 10336, dated the 12th October, 1908 (pages 82-84 of Joglekar's Alienation Manual). These rules are made inter alia under Bombay Act VII of 1863, section 2, clause 3, which is applicable to servants useful to Government and the community in Gujarat. Under the latter part of the proviso to rule 4 of the said Rules if such lands go into the possession of a person other than the person who for thetime being is duly authorised to perform and does actually perform the duties in r spect of which such lands are held, the Collector can in his discretion direct (1) the resumption of such lands, or (2) the continuance of the same subject to such new conditions as he deems fit to impose or (3) the resumption of a portion of such lands. As in view of the consent decree passed Civil Court Suit No 187 of 1950 Shri Doyabhai Chhana had agreed to leave them possession of the four lands with Shri Chhitabhai Khushalji on his paying a sum of Rs. 140 per year as rent, it would be open to the Collector to resume the lands as suggested at 'A' in the R.D. note at page 80 ante.

Sd./-
12/9
Additional Secretary to Government.

U.R. to R.D., No. 14993/A; dated the 13th September, 1952.

SVV
12.6.56.
4 e.

Legal Department.

The view taken by the Political and Services Department is correct. R.L.A.'s opinion No. 13156, dated the 17th August 1951 would apply to this case. The liability of this Government to pay to the ex-holder of the abolished Ashte Jahagir would be limited to theliability of the Hyderabad State on the date ~~is~~ of the transfer of the enclave until the terms of commutation are settled by Government.

Sd./-
9/12
Additional Secretary to Government.

U.R. to P.& S.D., No. 20732/A; dated the 10th December, 1952.

SVV
12.6.56.
4 c

Legal Department.

It appears in this case that first some lands were given as remuneration for service done by Jilhedar family. Later onthese lands were resumed and some allowance in cash and kind was assigned as remuneration for service. One of the members of the family appears to have worked as a munsiff, while others have held some inferior posts. The nature of the inam and the service to be rendered by the family do not, therefore, appear to be clear from these papers. Moreover the applicants' claim to the title of the inam is also not established. In the circumstances the parties concerned may be directed to establish their claim to the Inam in the Court.

Sd./-
29/12
Additional Secretary to Government.

U.R. to R.D., No. 22104/A, dated the 30th December, 52.

SVV
12.6.56.
4 c.

Legal Department.

The question regarding the abolition of inams in merged States is being considered in the Revenue Department. The point involved in this case may therefor be considered after the decision on that question is taken by Gover ment. Moreover, the party affected in this case, Swami Jagadguru, has not yet protested against the resumption order passed by the Sarsubha of the former Kolhapur State. The Collector of Belgaum in his letter dated 17-10-1952, has observed that if the Swamiji now prefers an appeal against them order it would be time-barred. In the circumstances Government need not take any initiative to set the order at this stage.

Sd./-
30/12
Additional Secretary to Government.

U.R. to R.D., No. 22152/A, dated the 31st December, 52.

SVV
12.6.56.
4 c.